

# ARKANSAS SUPREME COURT

No. 07-1331

DONALD RAY PETERSON  
Petitioner

v.

LARRY NORRIS, DIRECTOR,  
ARKANSAS DEPARTMENT OF  
CORRECTION  
Respondent

Opinion Delivered      February 21, 2008

PRO SE MOTION FOR RULE ON  
CLERK OR BELATED APPEAL  
[CIRCUIT COURT OF JEFFERSON  
COUNTY, CV 2007-1065, HON.  
ROBERT H. WYATT, JR., JUDGE]

MOTION TREATED AS MOTION  
FOR BELATED APPEAL AND  
DENIED.

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## PER CURIAM

On December 27, 2006, petitioner Donald Ray Peterson, a prisoner incarcerated in the Arkansas Department of Correction, filed a petition for writ of habeas corpus in Jefferson County Circuit Court. The circuit court denied the petition by order entered January 29, 2007. Petitioner now brings this pro se motion for rule on clerk or belated appeal of that order.

The partial record filed with this court does not indicate that any notice of appeal was filed. Petitioner references petitions for writ of certiorari tendered to this court, but an appeal, rather than a writ of certiorari, is the proper procedure for the review of a circuit court's denial of a petition for a writ of habeas corpus. *Flowers v. Norris*, 347 Ark. 760, 68 S.W.3d 289 (2002). We accordingly treat the motion as one for belated appeal.

A petitioner has the right to appeal a ruling on a petition for postconviction relief, such as a petition for habeas corpus relief. *See Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (per curiam). However, along with that right goes the responsibility to timely file a notice of appeal within

thirty days of the date the order was entered in accordance with Ark. R. App. P.–Civ. 4(a). If a petitioner fails to timely file a notice of appeal, he may move this court to file a belated appeal in accordance with Ark. R. App. P.--Crim. 2(e).

In *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004), this court clarified its treatment of motions for rule on the clerk and motions for belated appeal. We said that there are only two possible reasons for an appeal not to be timely, either the party or attorney filing the appeal is at fault or there is good reason. *Id.* at 116, 146 S.W.3d 891. If the party believes there is good reason the appeal was not perfected, the case for good reason can be made in the motion, and this court will decide whether good reason is present. *Id.* If the petitioner fails to timely file notice of appeal, a belated appeal will not be allowed absent a showing by the petitioner of good cause for the failure to comply with proper procedure. *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam).

In his motion, petitioner references the tendered petitions for writ of certiorari and what he contends were errors by our clerk and a staff attorney that have no bearing upon the timeliness of an appeal. Petitioner contends that he placed a notice of appeal in the mail and later a memo to the circuit clerk inquiring as to the status of that filing, and complains of what he perceives as unwarranted delays by the clerk in filing other documents. He suggests, but does not allege any facts that would show, that the notice was actually received by the clerk and not filed or filed after a delay. Nor does petitioner allege that, if received, the notice of appeal was received within the period as required by Rule 4(a). He avers that he is unable to ensure timely filing because he does not have access to the record and lacks the funds to use certified mail.

We have previously declined to adopt, and therefore do not apply, the mail-box rule that is

accepted in some courts and provides that a pro se inmate files his or her petition at the time the petition is placed in the hands of prison officials for mailing. *See, e.g., Hamel v. State*, 338 Ark. 769, 1 S.W.3d 434 (1999). An item tendered to a court is considered tendered on the date it is received and file marked by the clerk, not on the date it may have been placed in the mail. Even so, petitioner never indicates the date on which the notice of appeal was mailed.

A petitioner is solely responsible for filing his notice of appeal with the clerk. It is not the duty of the circuit clerk, or the responsibility of anyone other than the petitioner, to perfect an appeal. *See Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990) (per curiam); *Bragg v. State*, 297 Ark. 348, 760 S.W.2d 878 (1988) (per curiam). All litigants, including those who proceed pro se, must bear responsibility for conforming to the rules of procedure. *Peterson v. State*, 289 Ark. 452, 711 S.W.2d 830 (1986) (per curiam); *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (per curiam); *Thompson v. State*, 280 Ark. 163, 655 S.W.2d 424 (1983) (per curiam). *See also Tarry v. State*, 353 Ark. 158, 114 S.W.3d 161 (2003) (per curiam). The pro se appellant receives no special consideration on appeal. *Elliott v. State*, 342 Ark. 237, 27 S.W.3d 432 (2000). *See Gibson v. State*, 298 Ark. 43, 764 S.W.2d 617 (1989).

Petitioner has not presented facts to show that the use of certified mail rather than ordinary postal service would have resulted in a timely filing of the notice of appeal because petitioner has not demonstrated that he took action to file a notice of appeal within the thirty-day period. Under our previous rulings, he is obligated to perfect the appeal in accordance with our rules. He has not demonstrated that a lack of funds prevented compliance with our rules. Because he has not demonstrated good cause for his failure to timely file the notice of appeal, his motion is denied.

Motion treated as motion for belated appeal and denied.